

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#21

In re application of : Tucholski  
Serial No. : 07/641,394  
Filed : January 15, 1991  
For : BATTERIES WITH TESTER LABEL

FYI

SEP 7 - 1993

Commissioner of Patents and Trademarks  
Attention: Ian A. Calvert, Vice Chairman  
Board of Patent Appeals and Interferences  
Box Interference  
Washington, D.C. 20231

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**OBJECTION TO PETITION FOR ACCESS**

A Petition for Access to this application was filed by Stephen D. Murphy on or about August 18, 1993. Mr. Murphy alleges, as grounds for access, that United States Patent 5,223,003 claims the benefit of the filing date of this application.

Applicant objects to this Petition insofar as it seeks access to the prosecution of this application. The ground for this objection, succinctly stated, is that no prosecution has taken place in this application of the subject matter claimed in United States Patent 5,223,003.

United States Patent 5,223,003, more particularly, issued from Application Serial No. 813,234 filed December 23, 1991. Application Serial No. 813,234 was a continuation-in-part of this application. Applicant's attorney has compared the specification of this application to that of United States Patent 5,223,003 and determined that the specification of this application is substantially incorporated into that of the patent. Applicant has determined, for this reason, that access to this application (but not its prosecution history) is proper. Copies of this application are attached and served on Petitioner.

Applicant's attorney has also reviewed the prosecution of this application and compared it with the claimed subject matter in United States Patent 5,223,003. Each of the claims of the patent specifically recites the step of applying "a layer having a color contrasting to the color of the thermally sensitive material between the conductive layer and thermally sensitive material." No claim of comparable scope has been prosecuted in this application. No claim of comparable scope, in fact, could have been prosecuted in this application because this application does not even disclose the step of applying of a color-contrasting layer. This step was the subject matter added in the continuation-in-part application.

There exists, in short, no prosecution in this application "of subject matter claimed in the patent." M.P.E.P. §103. Petitioner, thus, is not entitled to access to the prosecution of this application. Petitioner is entitled, rather, only to access to this application as filed. Such access is furnished by serving herewith a copy upon Petitioner.

Respectfully submitted,

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